IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4602 of 2006

SMT.ASHA & ORS.
V/S
PREM SINGH & ORS.

Mr. DD CHITLANGI, for the appellant / petitioner

Mr. RAKESH ARORA, for the respondent

Date of Order : 11.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The petitioner seeks to challenge the impugned order, whereby the petitioner's application filed under 18 Rule 3 CPC has been rejected. It is contended that out of the issues, burden of issues No.7, 8 and 9 was on the defendant, and the plaintiff while closing his evidence, has reserved his right of rebuttal. In that view of the matter, he is entitled to lead evidence in rebuttal on these issues.

Learned trial Court has dismissed that application on the ground, that after closer of the defendant's evidence, the case was fixed on 9.2.2004 for final arguments, and on that day, no request was made for leading any rebuttal evidence, rather written arguments were filed, and this did not occur to the learned counsel even at the time of final arguments, and that, thereafter the matter

went on for reply to the written arguments. In that sequence, on 18.5.06 the present application has been filed for leading evidence in rebuttal.

In my view, from a look at the order-sheets, copies whereof have been filed by the respondent as Annex.R/1, it is clear, that on 3.1.2004 the defendant's evidence was closed, and the case was fixed on 9.2.2004 for final arguments, and on 9.2.2004, written arguments were submitted on behalf of the petitioner, and the case was adjourned for reply to those written arguments, and the case is going on for final arguments. In such circumstances, it is clear, that before filing of the application, the petitioner never invited the attention of the Court that he wants to lead any evidence in rebuttal.

In such circumstances, learned trial Court rightly found that the plaintiff is not entitled to lead evidence in rebuttal.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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